

NEW HAMPSHIRE STATE BUILDING CODE REVIEW BOARD

Minutes of Meeting

August 13, 2004

Attendance:

Robert Clegg, Chairman, Department of Safety

Joel Fisher, Board of Engineers, licensed structural engineer
Kenneth Andrews, NH Building Officials Association, municipal building official
Rick Swain, NH Plumbing & Mechanical Contractors Assoc., mechanical contractor, business
James Petersen, PE, Board of Engineers, licensed mechanical engineer
Tyler Carlisle, Board of Engineers, licensed electrical engineer
Jerry Tepe, Board of Architects, licensed architect
Mark Weissflog, NH Electrical Contractors Business Asso., licensed master electrician
John Tuttle, NH Home Builders Association, Architectural designer – residential
George Maihos, NH Electricians Board, licenses master electrician
Tedd Evans, Board for licensing and regulation of plumbers, licensed master plumber
Fred Baybutt, Associated General Contractors, building contractor – non-residential buildings
Michael Santa, CBO, Governor's Commission on Disability, Architectural barrier/free design
Medard Kopczynski, NH Municipal Association

Excused:

Wes Golomb, Public Utilities Commission, State energy conservation code office

Absent:

Thomas S Lambert, Chief, NH Association of Fire Chiefs, Municipal Fire
Bruce Phillips, NH Association of Fire Chiefs, municipal volunteer fire chief

Guests:

Marta Modigliani, Attorney, Department of Safety, Office of the Commissioner
J. William Degnan, Acting State Fire Marshal
Richard Hopley, City of Portsmouth, NH
Nancy Allen, State Plumbing Inspectors
John Lanoir, City of Portsmouth, NH

PUBLIC HEARING:

Chairman Clegg opened the meeting.

Rulemaking Bcr 200 Rules – The Chair recognized Marta Modigliani. Marta stated that the authority for this Public Hearing is RSA 541-A:11, and this hearing is being tape recorded. The purpose is to gather Public Comments on proposed administrative rules. The written comment period will close on Tuesday, August 24, 2004 at 8:15 am. Comments should be sent to Marta Modigliani, here at the Department of Safety. For the record, we have a quorum of the Board in attendance. Marta asked if there was anyone from the Public who wished to speak. There being none, the hearing recessed for 30 minutes.

Chairman Clegg declared a recess for 30 minutes.

Plumbing Code Amendment – Exhibit 13 – Tedd Evans the two proposed Plumbing Code amendments before you today are involved with the section of the Plumbing Code which requires separate facilities. Meaning, for men and for

women. There are currently 3 exceptions to the Rule, and the proposal is to add 2 additional exceptions to the Code, for the requirement for separate facilities. The first one is number 4 – its says separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 50 or less. It is relevant that this amendment appears in the 2003 edition of the International Plumbing Code. The reason is that it seems like maybe an error was made, or that this is not the direction the Code was intended to follow, which involves requiring separate facilities in extremely small occupancies. Occupant load is figured by square footage. The second one is number 5 – is says separate facilities shall not be required in assembly occupancies that serve food with a total occupant load including employees and customers of 25 or less. The reason is that there seems to be a conflict with our State law. The food service Statute has this very language in it. And when they go to obtain their licensing, they are told that you only need separate facilities if you are going to have more than 25 people in your establishment. The attempt was to get some continuity with existing State Law, modify the Plumbing Code to match that and that is the intent here. Jerry Tepe asked in #5 – trying to match the sanitary production / distribution of food rules, those Rules say that this occurs between 1 and 24 patrons, therefore, I suggest an amendment be made instead of 25 or less it should read less than 25 – to parallel, otherwise you are creating a gap. Ken Andrews asked on points of clarification. When Tedd used “we” he meant as in his position with the City of Nashua, the proposal was brought by the NH Building Officials Association.

Chairman Clegg asked if there was anyone else who wished to testify.

Richard Hopley, Chief Building Inspector for the City of Portsmouth, here to speak in FAVOR of this proposal. We have experienced these very same issues in the City of Portsmouth. This also effects the International Building Code 2000, which is also part of the State Building Code. The new IBP 2000 imposed extraordinary restrictions on the building environment community vs the BOCA provisions that we had all been accustomed to. This proposal has very little to do with plumbing, and a lot to do with spatial environmental design and public health. Along with the inclusion of scoping provisions for bathroom facilities in the Building Code, also came a drastic change from the focused ends we were use to, for small retail spaces. Med Kopczynski asked just to be clear if he was testifying in favor of the amendment. Beyond the lost of floor space is there any estimate on the additional cost fixture wise? Richard Hopley did not have one. Med said that would be important. Tedd Evans asked to touch on the food service area. Richard Hopley said that they do support that as well. Ken Andrews asked if he found this problem more with renovations, alterations downtown or in new construction? Richard Hopley said its both. It can be tricky when the regulation gets implemented, where store fronts turn from one type to another type. Chairman asked if there were any further questions, seeing none, thanked Mr. Hopley.

John Lanoie, Plumbing Inspector for the City of Portsmouth. Ken Andrews asked for a Point Of Order. Could you tell us what the 480 square feet example, and its relevance is? 480 sq. ft is the magic number you need when you need 2 handicap bathrooms for mercantile. 24 is the trigger, same as the food code now requires. He agrees with the amendment, but would use the 24 number. Med Kopczynski asked what the cost factor is. John Lanoie said you are looking at 2 or 3 thousand dollars minimum for a handicapped bathroom. It could be more – depending on if you have to build 1 wall, 2 walls, etc. Rick Swain commented that it could be as much as \$15,000 again depending on what needs to be done. Mike Santa on the 2nd amendment, a couple of things to keep in mind. Previously the Plumbing Board was amended to make that number consistent – they went to the 25. When we adopted the IBC 2000, we took what was in the Code, which reduced that to 15. We want to have consistency within the State on standards that are being enforced on the public. Some adjustment or amendment needs to be done. Tedd Evans asked if it was more advantageous to amend the food service with regard to number of toilets required or the building and plumbing code? John Lanoie said that he would amend the building and plumbing code and let the food service stay. Joel Fisher asked if any thought had been given to the difference to the use? If you have a food service establishment vs a mercantile establishment? Generally food service would generally use toilets more than a mercantile would. Any consideration given to this thought? John is in favor of it going to 50 and for people eating would be 24. Ken Andrews asked is there not already a section in the plumbing code that allows you at a local level to deal with these situations that are unique? John Lanoie said that yes on a local level he can modify it. Still would like to see it state-wide. Ken asked, if we change as presented, the modification strictly to the Plumbing Code, is there still going to be a conflict with the Building Code, if the only amendment is made to the Plumbing Code? Well, the charge is in the Building Code now, so you would have to make a reference to change the number in the Building Code. Ken asked for a Point of Order. We are only dealing with that, so that conflict if there is going to be one, would still exist. Is that correct? Chairman Clegg said we will address that when we move forward. Med Kopczynski, Point of Order, Exhibit 13 specifically says International Plumbing Code, Section 403.2, and International Building Code, Section (292.2)? Tedd Evans asked John to clarify the issue of consistency. John stated that they were looking for consistency within state law.

Nancy Allen, Chief Plumbing Inspector for the Plumbers Licensing Board, the 5-state plumbing inspectors are opposed to these amendments. First off they are plumbing amendments and unfortunately the Plumbing Board was never notified of Plumbing Amendments. For the record, we are under the 2000, not under the 2003 International Plumbing Code. If you want to take Rules and Sections out of the 2003 Code, and re-write the 2000 to meet the 2003 then lets adopt the 2003. The Inspectors feel very strong about having a consistent Code. Mike Santa asked if she was aware of Chapter 155:40 which address toilet facilities to be provided in restaurants? Nancy told him that she was not. Mike asked about 'impact on public safety' and asked for clarification. Nancy stated that washing your hands, before and after you eat, after you use the toilet. James Petersen asked if the Code is the Code, but they know there is an avenue for exceptions, doesn't that cut into the consistency that they want. Nancy responded by saying that that allowance is in all the International Codes, because the Codes can not specifically address each specific building that would ever be put in. James Peterson asked for Nancy's opinion on what's more likely to be consistent for plumbers. Nancy said that the modification is there for a purpose, to allow the Code Official to grant the border-line cases. Its a performance Code not a specification Code. The amendments would effect everything down the line that has not been addressed. The State Plumbers Board has not taken an official stand on these amendments; the State Inspectors, as plumbers, have taken the stand that these amendments are not necessary. She was there representing the State Plumbing Inspectors, not the State Plumbing Board. Joel Fisher asked if the Rule regarding 25 patrons, if it was in the Rules prior to that, or was that adopted at that time? Nancy said that this is the Health Department Rules, and she was not aware of their process, or their Rule Adoption. Joel asked the Body, if anybody knew when that requirement showed up in the Rules. Chairman Clegg said it should state on the bottom of the Rule. Chairman Clegg asked that this same Plumbing Code amendment was something that was called a "Plumbing Code amendment", prior to our adoption of the 2000 Code at the Legislature, is that correct? Nancy answered that it was a Plumbing Code amendment created on the 1993 Code, and that was the last Code that was adopted. Our law does not allow us to make an amendment that is less stringent that what the Code says. Tedd Evans asked for clarification. The State Law says that towns may adopt Codes but may not adopt Regulations less stringent. Can you specifically state the language or the Section or where you are getting this information from . . . that the Plumbing Board can not propose Amendments less stringent. Nancy said no she could not.

Chairman Clegg asked if there was anyone else wishing to testify. He called for a 10-minute recess.

Chairman Clegg called the meeting back to order. Asked if there was anyone else wish to testify in this matter. Anyone who would like to testify for a second time? Richard Hopley said there was some testimony earlier concerning the Sections in the Code that allow the Code Official to make modifications. And for the benefit of the Board, he will read that Section, 2003 IBC, there is no vertical lines, so I am assuming that the language in the 2000 IBC is identical language, again, because there is no indication there has been a modification.

"Section 104.10 Modifications: Where ever there are practical difficulties involved in carrying out the provisions of this Code, the Building Official shall have the authority to grant modifications for individual cases, upon application of the owner or owners representative, provided, that the Building Official shall first find that special individual reason makes the stricter letter of this Code impractical, and the modification is in compliance with the intent and purpose of this Code, and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modification, shall be recorded and entered into the files of the Department of Building Safety".

James Petersen, asked in Richard's experience, how often in general terms, does a modification occur, does something meet the standard of what you just described. Richard said that in Portsmouth, they try and stay away from that Section. They try to find applications of whatever the issue is in the Life Safety Code or other adopted standards. Med Kopczynski asked if there was any insight as to the health and safety reasons that might be as to why there is a requirement for 2 bathrooms vs one. Or if we went ahead and adopted the amendment is there any downside from the standpoint of health and safety. Nancy Allen said that the downside of cutting down toilet rooms is accessibility to facilities, not waiting, easier access to them, more efficient. Mark Weissflog re: 105.1 Modifications, if the local authority does allow a modification to that Section, and a state inspector comes in and disagrees with that exception, how is that remedied? And would there be an issue that would be addressed by the Plumbing Board? Nancy said that so long as all parties complied with that Section, 105.1 of the Plumbing Code, the State has no position because the Code has been complied with, provided, that the end result was with the intent of health and safety, and the intent of the Code.

Chairman Clegg asked if there was anyone else wishing to testify. Seeing none, declared the Public Hearing closed.

Chairman Clegg declared the Public Hearing re-opened on Rule Making Bcr 200 Rules.

Marta stated that since no one else has signed up to speak, she officially closed the Public Hearing at 11:15.

GENERAL MEETING:

ADOPTION OF MEETING MINUTES from June 11, 2004:

Mark Weissflog **Moved** that the minutes as printed and emailed be accepted. Motion was **Seconded** by Ken Andrews. There being no corrections, omissions, deletions, discussion, vote taken was **affirmative** and declared adopted by the Chair.

ADOPTION OF MEETING MINUTES of SBC-01-04 – Appeal June 21, 2004:

Tedd Evans **Moved** that the minutes be accepted. Ken Andrews **Seconded**.

Discussion – Ken Andrews informed the Chair that there was an amended version of the minutes printed,, and copies were emailed out to Board members, and copies were printed for distribution, just in case. There were only minor changes to some text and some unidentified speakers were identified.

Ken Andrews said the changes were only minor that were made and made the **Motion** to adopt. John Tuttle **seconded**. Vote taken was unanimous. Chairman declared them adopted.

ADOPTION OF COMMITTEE FINDINGS of SBC-01-04 – Appeal June 21, 2004:

The Dissent becomes part of the Committee findings. Whatever is adopted, needs to be signed. Those who agree with the Dissent, will sign the Dissent, those who agree with the Majority Report, will sign the Majority Report. There will be 2 original copies. Ken Andrews asked that by making the Motion to Adopt this, we automatically adopt both of these. It does not say we agree with either one in particular, we just adopt it. Correct? Chairman Clegg answered that the one you agree with, is the one you are going to sign. Ken Andrews made the **Motion** to adopt both reports. Motion was **Seconded** by Rick Swain. Discussion. Mike Santa questioned the final sentence in the final paragraph on the Majority Report, said he did not remember discussing it – and should it be part of the record or not? Chairman Clegg said that it was discussed and it was something the majority of the Board had agreed to. Vote was taken. Vote was **unanimous** to accept. Chairman Clegg will send both findings out to both parties.

OLD BUSINESS:

Proposed Rule Changes for Saf-C 6000 – Fire Code Rules:

Marta Modigliani addressed the Body. Back in June the Board decided that 'we' would make the amendments based on the concerns raised at that time. The Public Hearing was held on the Rules. The Final Proposed Rules are the ones that the Commission has adopted. The objections voiced in the earlier Board meetings have been incorporated. Jerry Tepe gave an objection – the handout dated May 25 did not include the revised height and area table – therefore no comment was made on that. In the Final Proposal the Table is back in and reiterate his objection to that from 2 years ago. And it is unfair that it is included in the Final Proposal but it was not included in the Initial Proposal. The Table was in the Initial Proposed Rules. As a result of annotations from the Counsel for JLCAR, they had indicated that what we had referenced as an Appendix had to be incorporated as part of the Rules. Chairman Clegg stated that JLCAR has no right to tell the Fire Marshal's Office what to put into their Rules. Chairman Clegg asked Marta to take out the portion on the Table/Appendix section. The Height and Area was a compromise and to throw it into Rules where some people will be suspicious that it will be changed later in a Rule, and nobody else will know, deteriorates the relationship built up between the fire community and this Board. Marta will **remove** the language that is inside the Rules and the Appendix which now **includes** the Table and just **reference** the State Building Code Review Board Rule. Fire Marshal Degnan said that that is their intent. Jerry Tepe questioned why in Section 6008.05 Adoption of Height and Area Limitations – and for some reason – says Fire Resistant Table – why does that have to be the Code at all, it is part of the Building Code, the Fire Marshal has the authority to enforce the Building Code, and there is no reason why its even referenced in there. FMO Degnan said that they do not have that authority to enforce the State Building Code, nor does the Fire Office in the community have that authority. This is an opportunity for the Fire Officer to have authority to say 'I want to see this Section included'. It was to be put in there to protect ~~4~~the public as well as protecting the firefighters who would have to go into the building. Ken Andrews was Chair of the Committee that worked with Fire and Municipal Association that worked on this Table, and it was very clear during the process, that this was **NOT** going to be part of the Fire Code, it was going to be The Building Code. He is opposed to the inclusion of Section 6008.05 in the State Fire Code. Jerry Tepe said that if they are **just** referenced to the State Building Code, he would have no objection. Marta said these are going before the Committee on 8/19, but she will request a Conditional Approval, if she does not get a preliminary objection. Per Chairman Clegg, Marta will send a

cover letter to the Chair of the Committee, Representative Betsey Patten, explaining that this Board was upset with the JLCAR Attorneys and demand we want to use that Section to just reference the State Building Code as it pertains to height and area, and she will cc Chairman Clegg. Med Kopczynski asked for clarification for the role of the Board here. He has a series of questions. The Public Hearing took place before he had a copy of the Rule. What would be the proper venue to ask his questions. Having about 10 questions, Chairman Clegg said that he could ask them here, but they have already had their Public Hearing. Med asked Bill Degnan wanted to know if there was a specific reason why the definition of 'an authority having jurisdiction differs from NFPA 1. Bill Degnan said he did not know. Med asked exception or variance? As he understood the variance process only the State Fire Marshal's office (or his designee) can issue an exemption or variance, done by actual petition, formally. Bill said that is correct. Med asked the definition of multi-family dwelling includes the term condominium units, duplexes and houses. He thinks that is unusual. Bill said the term was taken from the statute and that is why it was included. Med asked the term rental unit is a new definition. Bill said that yes it was a new definition. Med pointed out a type-o to Marta. Med asked Bill if he could email him all the increases and decreases changes. According to State Liquor, NH does not have 'bars'. Med also asked about the hard wire smoke detectors in rental units, who is going to make sure that happens? Bill stated that it is the responsibility of the building owner to make it happen.

Ken Andrews asked where does the general public find a list of the adopted by reference codes in the State Fire Marshal's office. Marta said there is no list as such, but if they looked at the Rules for the Fire Marshal's Office, it goes into where they can go to obtain the info. Bill Degnan stated for appendix is not a legal document for enforcement purposes, it is a guide. If it is listed in the Chapters of the Code, then it is part of the legal document.

Jerry Tepe said the additional requirements for sprinklers for 'new' bars, nightclubs, etc., we seem to be going to the contrary. Bill said that for new construction, the Life Safety Code starts at the level 50, so it only makes sense to start new construction consistent.

Proposed Amendments Bcr 215:

Tyler Carlisle asked if the adoption of the Electrical Code on page 20 will be changed. Bill said that is one of the things they are going to see if it can be.

John Tuttle asked that under Rejection of Notice of Appeal, is that an application how to fill out? Marta said no. John asked if any of that information was incomplete, would that constitute a rejection? Marta said that within 30 days they would have to correct the deficiency.

Chairman Clegg asked for a **Motion** give Marta the authority to send these off to JLCAR. Jerry Tepe made the **Motion**, it was **seconded** by Tyler Carlisle.

George Mailhos asked where this information came from. The proposed amendments came from the Attorney General's office. Chairman Clegg said that we needed a process for Appeals. These will be added to Bcr 200. Vote taken was **affirmative**, no opposition, and so declared by the Chair. Marta will go both the interim rules and the permanent rules with this language.

NEW BUSINESS:

There was no new business brought before the Board at this meeting.

OTHER BUSINESS:

Plumbing Code Amendment – Exhibit #13. Tedd Evans made the **motion** to adopt the amendment, Tyler Carlisle **seconded** the motion. The Amendment as it is written is for 25 not 24. And it must be changed to 24 not 25. Tyler Carlisle proposed that amendment. Tedd Evans accepted the modification to the Amendment to change his **Motion** to read: (the last paragraph on number 5) **"Including both employees and customers of less than 25"**. Discussion. Joel Fisher the amendment is for both mercantile and the assembly, and what is the rationale behind this, other than if you have this many square feet, it just makes sense. Mike Santa said the rational is to make thing more uniform – and not be giving builders, plumbers the run around so much. Tedd Evans said on the downside, when originally presented, the staff was opposed, because females do not like to use toilets that men just got done using and that was a rational for keeping the Code the way its written. On 105.1 giving the local jurisdiction the authority to make these considerations, that will breed all kinds of inconsistencies. Joel Fischer agrees with the consistency 100%. Since its been done 'this way' for many years, 20, 30, 40 . . . doesn't necessarily make it right. Rick Swain said as a member of the Contractors Association they support the amendment, its logical, and consistent with what has been in the State for many years. Ken Andrews as a representative of the Building Officials of NH, and as such they support the

amendments. The reason for the amendment is because 2003 Code says it. #1 we may not adopt the 2003 Code. #2 by the time we get around to doing anything, the 2006 might be out and we don't know what that says – we need to be cautious about re-writing a Code based on the future #3 we have decided that the 2000 Edition is the Code we use – stick with it. There has not been one issue brought up today that deals with anything specifically with Life Safety, Fire Safety or hazard. Its cost, its space and its inconvenience, nothing else. George Maihos stated that if the building officials already have the authority to modify this, does not see a need to have it done here. Med Kopczynski said he is not really for these amendments. There are some significant reasons why the Code requires the fixtures and the separate bathrooms. John Tuttle asked if presenters are allowed to vote. Chairman Clegg said yes.

Item #1 VOTE: Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 50 or less. Vote was one opposed. Item #1 passes and declared adopted and passed.

Item #2 VOTE: Separate facilities shall not be required in assembly occupancies that serve food with a total occupant load, including both employees and customers, of less than 25. Vote for was 7, vote against was 6, majority of vote was in the affirmative and so declared adopted and passed.

ADJOURNMENT:

Chairman Clegg accepted a **Motion** to adjourn from Tyler Carlisle. And being duly **Seconded** asked for a vote. Vote declared unanimous and Chairman Clegg closed this Board meeting.